UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL INC., COMEDY PARTNERS, COUNTRY MUSIC TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION LLC, Plaintiffs, v. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE INC., Defendants.	ECF Case Case No. 1:07-cv-02103 (LLS) **DECLARATION OF ROELOF BOTHA**

I, Roelof Botha, declare, I am a partner with the venture-capital firm Sequoia Capital in Menlo Park, California. The following facts are true of my own personal knowledge and if called and sworn as a witness I could and would testify competently to them.

1. Sequoia is one of the best known and most successful venture capital firms in the world, with offices today in the United States, China, India, and Israel. Over the course of almost forty years of investing, the firm has provided capital to hundreds of companies, primarily in the technology sector. Some of the well-known companies in which Sequoia has been an early investor include Cisco Systems, Apple Computer, Oracle, Yahoo, and Atari. Sequoia was an early investor in Google Inc. and separately in YouTube, LLC. Sequoia was also a significant

investor in Atom Entertainment, now owned by Viacom, and it invested together with Viacom in an online service called Joost.

2. I was the Sequoia representative principally responsible for the firm's investment in YouTube, LLC. I learned of the YouTube service from a friend in roughly July 2005 and shortly thereafter began uploading personal videos that I had created to the service so that members of my family could view them. I also used the service to view personal videos uploaded by my own friends and family and on occasion by others as well.

3. Based on my initial experiences with the YouTube service and the way that the service described itself to users, it was my understanding that the service was designed and intended for this sort of sharing of "user-generated content." At the time, services that facilitated the sharing of other forms of user-generated content were already well known and successful. For example, services like Flickr, Shutterfly and Webshots and a host of others allowed users to easily share photographs with one another. Services like Blogger allowed ordinary users to express their views in writing on any topic and publish those thoughts to the world. I saw YouTube as a next step in the evolution of user-generated content services, one that would allow ordinary users to express themselves to the world through the medium of video. I felt that the growth potential for such a platform was enormous given the rapid spread of personal video cameras and the growing availability of broadband Internet connectivity to ordinary consumers.

4. Because of my personal experience as a user of the YouTube service and what I saw as its potential, I reached out to the company's founders, Chad

Hurley, Steve Chen and Jawed Karim in August 2005 to investigate whether there was an opportunity for Sequoia to invest in YouTube.

5. In at least two separate meetings in or about August or September 2005, the YouTube founders described their vision of the service to me and certain Sequoia partners. In those meetings, the founders emphasized that their aim was to develop a platform to be used for the sharing of user-generated content online. Attached hereto as Exhibit 1 is a true and correct copy of the presentation that the YouTube founders presented to me and certain partners at Sequoia regarding their vision for the service in September 2005. In describing the company's purpose, the founders stated: "The company's goal is to become the primary outlet of user generated video content on the Internet, and to allow anyone to upload, share, and browse this content." Their presentation to us went on to explain the reasons why they believed a service like YouTube was then poised for significant growth:

> "Digital video recording technology is for the first time cheap enough to mass-produce and integrate into existing consumer products, such as digital photo cameras and cell phones, giving anyone the ability to create video content anytime, anywhere. As a result, user-generated video content will explode."

6. At no time during our pre-investment meetings with the YouTube founders did any of the founders express any interest in profiting from the sharing of unauthorized copyrighted material through the service or in having the service grow by virtue of the presence of such content. Indeed, the founders did not merely say that user-generated content was their focus, they offered that focus as the rationale for Sequoia to expect the company to grow, and as a means of differentiating YouTube from other online video services in existence at the time.

7. Following our meetings with the YouTube founders, I prepared an investment memorandum for the Sequoia partnership summarizing what the founders had communicated to us in our meetings and providing a recommendation that Sequoia invest in YouTube. A true and correct copy of the investment memorandum I prepared is attached hereto as Exhibit 2. I led off my memorandum by recounting the company's objective of becoming the "primary outlet of user generated video content on the Internet" and throughout the memorandum I highlighted statements from the founders about how such original user content was the engine that would drive the service.

8. Following my recommendation, Sequoia offered and YouTube accepted an investment in the company in the fourth quarter of 2005. Attached hereto as Exhibit 3 is a true and correct copy of the press release YouTube subsequently issued announcing Sequoia's investment. In that release, on behalf of Sequoia, I reiterated our vision of the YouTube service which mirrored that expressed to me repeatedly by the company's founders:

> "We are very excited to be involved with YouTube at a time when consumers are poised to benefit from all the consumer electronics available. The demand for user-generated content continues to grow exponentially."
>
> "We've already seen user-generated content blossom in text through blogging, in photographs through services like Flickr and Shutterfly, and in audio through podcasting. YouTube is pioneering the next wave to become Internet's premier video service."

9. In connection with Sequoia's investment, I became a member of YouTube's board of directors, and held that position until the company was acquired by Google in November 2006. Consistent with Sequoia's philosophy regarding

companies in which it invests, as a board member I discussed with management the company's strategic and policy decisions.

10. After Sequoia's initial investment, YouTube experienced extraordinary and rapid growth. As I had witnessed firsthand, the service made it simple for the average person to upload a video they wanted others to see. The service was just as intuitive and accessible for potential audiences. Within just a few months, as online video consumption soared, YouTube became the online destination of choice for anyone looking to share their videos, and correspondingly, the online destination of choice for those interested in watching those videos.

11. Very early on, professional content creators began to use YouTube as a promotional outlet. I know, for example, that in October 2005, the shoe company Nike uploaded an amateurish-looking, but professionally created video featuring Brazilian soccer star Ronaldinho engaged in a pre-game warm-up routine wearing Nike shoes (a version of the video is accessible at http://www.youtube.com/watch?v=KNwLn85I75Y). The video (including various versions of it) has been watched millions of times on the YouTube service. Such promotional use of YouTube is far too substantial and far too varied for anyone even to recognize a small fraction of it, let alone catalog it all.

12. I also have personal experience with the widespread use of the YouTube service by major media companies for promotional purposes. While companies regularly uploaded clips of their content to the service for such purposes, they also often chose simply to leave on the service clips of their content that ordinary users had uploaded. This phenomenon was powerfully illustrated for me

by our experience with the clip known as "Lazy Sunday", a roughly three minute video that aired on the NBC television show Saturday Night Live in late 2005. That clip went "viral" on YouTube after someone uploaded it to the service – meaning that those who saw it often shared it with multiple others, growing the total audience at an extremely accelerated rate – and generated enormous press attention for the clip, for Saturday Night Live and for YouTube.

13. YouTube did not know who held the copyright in the Lazy Sunday clip, who had uploaded it to YouTube, whether that person had advance approval from the copyright holder to upload it, whether the copyright holder subsequently approved of the presence of the clip on YouTube even if the copyright holder had not done so in advance, or even whether such approval was required. But in light of the attention the clip had garnered, the company's CEO, Chad Hurley, wrote to NBC Universal asking whether NBC was aware of the clip and whether NBC wanted it to remain on the service or wanted YouTube to immediately remove it. For five weeks, YouTube heard nothing at all from NBC, and with NBC's knowledge, the Lazy Sunday video remained accessible on the YouTube service, continuing to generate large numbers of user views as well as national press attention.

14. The Nike and Lazy Sunday experiences and many others like them helped shape my thinking about how YouTube should handle the presence on the service of potentially unauthorized copyrighted materials. Throughout my tenure on YouTube's board, this was one of the principal issues the company grappled with. From the start, YouTube recognized that in an environment in which users could upload content of their choosing to the service, some users would disregard the

company's prohibitions and desires and upload material to the service that they did not have the right to share. The company recognized, however, that it had no practical ability to make determinations regarding whether each of the tens of thousands of clips being uploaded to the service every day had been uploaded or approved by the copyright holder or was otherwise authorized by law. Accordingly, the company discussed and supported a host of innovations and policy measures aimed at reducing the incidence of unauthorized copyrighted material on the service. These included, among many others: (1) the institution of a ten minute time limit for the length of videos that could be uploaded to the service to prevent users from uploading full-length television episodes or films; (2) development of an easy-to-use interface through which content owners could identify what they claimed to be their content on the service and request that YouTube remove it at the touch of a button; and (3) fingerprinting technology that would block any user from uploading to the service a file that had previously been removed from the service based on allegations of copyright infringement. Later, the company selected and implemented a more robust, audio fingerprinting technology to assist content owners in locating videos on the service and allow them to determine whether they wanted those videos to remain.

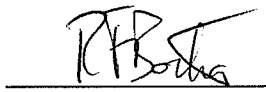
15. During my association with the company, management and the board worked hard to strike the appropriate balance between preserving the ability of users to express themselves freely through the YouTube service while at the same time enabling content owners to detect and address what they perceived to be the unauthorized use of their material. At no time, however, based on my observations

and participation in the strategic and policy decisions the company made, did the company desire to profit from unauthorized copyrighted material on the service or to have the service used as a platform for the sharing of unauthorized copyrighted content.

16. I felt very strongly as a member of YouTube's board of directors that, legal issues aside, the company should not encourage, and that it should explicitly discourage, the sharing of unauthorized copyrighted material. I believed that the presence of such content on the service undermined YouTube's business objectives by alienating copyright holders, including major media companies, with whom YouTube had reached or wanted to reach advertising and content syndication deals. Moreover, from my perspective as a major investor in the company, I believed that if the company did not demonstrate its respect for copyright law, the service would be unattractive as an acquisition target and/or unable to sell its stock to the public. For these and related reasons, throughout my association with YouTube, the company actively cooperated with copyright holders to reduce the incidence of unauthorized copyrighted material on the service.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 26th day of February, 2010 in Menlo Park, CA



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